IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1513 OF 2006

Mohammed Salim Abdul Karim ..Petitioner

Versus

The State of Maharashtra and others ...Respondents

Mr. A.N. Maniyar for the petitioner.
Mrs. Mugdha Jadhav, Assistant Government Pleader, for respondent Nos.1 and 2.
Mr. A.S. Karwande for respondent No.4.

CORAM: SWATANTER KUMAR, C.J., &
S.R. SATHE, J.

Date April 02, 2007.

P.C.:

We have heard the learned counsel appearing for the parties.

2. In this petition under Article 226 of the Constitution of India, the petitioner prays that his salary be computed on the basis of Bhole Pay Commission in the pay scale of Rs. 250-435 with effect from 1980 and the same be paid to him. He further prays that there is an anomaly created in the scales payable. In view of the

grievance raised, the petitioner, besides writing letters to the Department and also serving through his counsel notice dated 9th March, 2006, which was duly received by the concerned department on 14th March, 2006, till today the authorities have not bothered to give reply to the petitioner. A memo was served on 9th September 2002 upon the petitioner stopping his increment with effect from 1st December 2002 for a period of two years but even after 1st December 2004, the increments were not released and the petitioner continued to receive earlier basic salary, though he ought to have received Rs.4,500/- as his basic salary. The Principal of the college on 30th March 2005 replied to the petitioner stating that the petitioner was entitled to get his increments with effect from 1st December 2004. This resulted in issuance of a legal notice by the petitioner claiming fixation of his pay as per the provisions of Bhole Pay Commission and Fourth Pay Commission and also in the matter of anomaly in fixation of his pay. As already noticed neither his earlier representations were replied by the concerned authorities nor legal notice dated 9th March 2006. This is a typical attitude of callousness where an employee who is entitled to receive the benefit, is not granted the benefit, which he claims to, in fact his

request failed to persuade the authorities to respond.

3. The Government is under an obligation to respond to its employees and provide due redress to their grievance. It is least expected of a good employer to generate litigation and bring the litigant to the court without even informing him the cause or reason for grant and/or denial of a relief. By the development in law, administrative orders, which have civil consequences, are even expected to be reasoned orders. What to talk of passing of a reasoned order. Here the Department has not even cared to respond to the request of the litigant. We are unable to appreciate this practice.

4. In the case of Shanti Prasad Agarwal and ors vs Union of India and ors, -1991 Supp (2) Supreme Court Cases 296, the Supreme Court clearly stated that the administrative law requires that in an administrative action, while adhering to the principles of natural justing, passing of a speaking order would be desirable. In the case of Shri Mahender Kumar vs Land Acquisition Collector, W.P(C) No.13308-12 of 2005 dated 11th May 2006, the Division

Bench of the Delhi High Court observed as under:

> **"....Wherever a cause is relatable to breach of statutory or implied duty of a public officer, the rule of law would essentially provide for a remedy even if it is not so specifically spelled out in the provisions of the Act. Arbitrariness and unreasonableness being facets of Article 14 are available as grounds not only for questioning an administrative action but in certain cases may even invalidate subordinate legislation. Timely action is the essence of government functioning and unreasonable delay questions the very correctness of such orders. Wherever the records offer no explanation for prolonged unreasonable delay, the equity will tilt more in favour of the petitioners than uphold the action of the authorities to be correct, being done in the normal course of its business"**
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> **".....Concept of public accountability has been applied to the decision making process in the government by the courts for a considerable time. This**

concept takes in its ambit imposition of costs and its recovery from the officer concerned for their negligence or acts of prolonged, unexplained delays running into years. In the case of State of Andhra Pradesh vs. Food Corporation of India 2004 (13) Supreme Court Cases 53, the Court directed as under:- We are shocked as to the manner in which the State Government is filing petitions in this Court resulting not only in wasting the time of this Court and all others concerned but in total waste of public money. The impugned orders have been challenged after more than eight years with almost no explanation, as is evident from the paragraph reproduced above"

"....."The doctrine of full faith and credit applied to the acts done by the officers and presumptive evidence of regularity of official acts done or performed, is apposite in faithful discharge of duties to elongate public purpose and to be in accordance with the procedure prescribed. It is now settled legal position that the bureaucracy is also accountable for the acts

done in accordance with the rules when judicial review is called to be exercised by the Courts. The hierarchical responsibility for the decision is their in-built discipline. But the Head of the Department/designated officer is ultimately responsible and accountable to the Court for the result of the action done or decision taken. Despite this, if there is any special circumstance absolving him of the accountability or if someone else is responsible for the action, he needs to bring them to the notice of the Court so that appropriate procedure is adopted and action taken. The controlling officer holds each of them responsible at the pain of disciplinary action. The object thereby is to ensure compliance of the rule of law"

".....It is known fact that in transaction of the Government business, none would own personal responsibility and decisions are leisurely taken at various levels. It is not uncommon that delay would be deliberately caused in filing appeal or revision by Government to confer advantage to the opposite

litigant; more so when stakes involved are high or persons are well connected/influential or due to obvious considerations. The Courts, therefore, do not adopt strict standard of proof of every day's delay. The imposition of costs on officers for filing appeals causes public injustice and gives the manipulators an opportunity to compound the camouflage. Secondly, the imposition of costs personally against the officers would desist to pursue genuine cases of public benefit or importance or of far-reaching effect on public administration or exchequer deflecting course of justice. The principle of care, maintenance of higher caution, expeditious decision-making process in exercise of statutory powers, public accountability and transparency are also applicable to the various proceedings under the law of acquisition. Various provisions of the Act could be referred to demonstrate that the exercise of powers eminating from statutory provisions is coupled with public obligation, to protect the rights of the land owners....”

5. Even in the case of Civil Writ Petition No.4382 of 2002 a Division Bench of Punjab and Haryana High Court, observed as under:

> **"The Chief Secretaries of the States of Punjab and Haryana and the Adviser to the Administration, Union Territory, Chandigarh, have stated that they will not only ensure that the directions issued by the Court are implemented but would also take every possible step to reduce the avoidable litigation resulting from actions contrary to law/judgments to the State. They have stated that seminars were held and papers were circulated dealing with the subject matter of the direction contained in the judgment. The judgments which have attained finality would be particularly given effect to and the persons similarly situated would be given the benefit of the judgments and would not be forced to approach the court of law for redressal of their grievance as far as possible. They pray for some more time to issue instructions/**

circulars to all the Government, departments as to how the representations filed by the government employee should be disposed of by passing speaking orders. The competent authority should pass the orders which would clearly state the stand of the government in relation to the relief claimed by an employee. We place our appreciation on record with regard to the approach adopted by the senior most officers of the States, and as prayed they are given liberty to file affidavits of the properly authorised person of the concerned Government."

6. The basic rule of law is truly applicable to the administrative acts as well. The need for reasoned orders and prompt action by the State administration is the requirement of the day. Such an approach is bound to curtail the State litigation as well as improve the relationship of the State administration and its employees. Keeping representations pending for an undue period would only result in undesirable results and even frustration vis-a-vis the employee. To treat its employees fairly, is the obligation of the State. Least that is expected from the Government is prompt, if

not immediate, action to redress the grievance of the employee.

7. Inaction and/or action taken after inordinate delay by various functionaries in the State administration is bound to result in serious prejudice to the interest of the employee and to create unnecessary liability on the State. Amounts which are rightfully due to the claimants,if not paid,would not only invite payment of element of interest for the defaulted period. The State action causing loss is accountable under public law. This is the result of the innovation of a new tool with the Courts, which are the protectors of the rights of the citizens. The principle of public accountability and transparency in the State action should not lack bona fide and must be effected without undue delay.

8. In view of the above enunciated principles of law, we dispose of this petition at this stage itself, while directing the respondents to pass appropriate order in accordance with the principles of natural justice and communicate the said order to the petitioner within two weeks from today.

9. Before we part with this order, we consider it our duty to

issue directions to the State in light of the above discussion. (Boni judicis est lites dirimere). It is the duty of a Judge to remove the causes of litigation whenever and wherever an employee is aggrieved by an action of the State and makes representation to the State. The State is under obligation to respond to such request expeditiously and if entitled, in accordance with law, the relief should be granted forthwith.. Such a request should not be permitted to remain pending on the desk of various officers in the State hierarchy for indefinite period or any unreasonable period. Thus we direct the Chief Secretary of the State to issue circular in light of the above dictum to all concerned departments that they would dispose of the representation/request of the employee within a reasonable period and in any case not to exceed a period of three months from the date of receipt of such representation/request. Let this circular be issued within a period of one month from today.

10. The writ petition is disposed of with the above directions, leaving the parties to bear their own costs.

CHIEF JUSTICE

S.R. SATHE, J.